

The December 11, 2013 meeting of the Walpole Zoning Board of Appeals was held in the Main Meeting Room of Town Hall.

Chairman Susanne Murphy called the meeting to order at 6:30 P.M. with the following members present:

Susanne Murphy, Chairman
James M. Stanton, Vice Chairman (not present)
Daniel J. Cunningham, Jr., Clerk
Ted C. Case, Member
James S. DeCelle, Member

Matthew Zuker, Associate Member (not present)

Ilana Quirk, Town Counsel

6:30 p.m. – Town Counsel – 5th Fairway Development – Case #18-08

Chairman Murphy declared that under G.L. c. 30A, Sec. 21(b)(3) and (4), the purpose of the executive session will be to discuss litigation strategy regarding litigation known as 5th Fairway Development, LLC v. Walpole Board of Appeals, Housing Appeals Committee Number 2009-09 regarding a proposed comprehensive permit for land located on Baker Street; and that a discussion of the foregoing in open session could compromise the purpose for the executive session: and that the Board shall return to open session at the conclusion of the executive session.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, to go into executive session, under G.L. c.30A, Sec. 21(a)(3), regarding 5th Fairway Development, LLC v. Walpole Board of Appeals, Housing Appeals Committee Number 2009-09, for the purposes and reasons declared by the Board's chairman, with the Board to return to open session at the conclusion of the executive session.

The vote was **4-0-0 in favor.** (Ms. Murphy – aye; Mr. Cunningham – aye; Mr. Case – aye; Mr. DeCelle – aye)

The Board returned to open session.

7:00 p.m. – Acropolis Property Management – Case #16-13 (cont'd from 10/23/13) (Murphy, Stanton, Cunningham, Case, DeCelle, Zuker)

The applicant was not present for their public hearing.

Angelina Schepis, 465 Fisher St., informed the Board that some removal was taking place on the property the day before, the fence has blown over, and dirt was left on the roadway.

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to close the public hearing.

The vote was **4-0-0 in favor.** (Murphy, Cunningham, Case, DeCelle voting)

7:30 p.m. – James Fahey – Case #19-13

Ms. Murphy read the public hearing notice for **JAMES FAHEY, Case #19-13**, with respect to property located at 80 Emerson Rd., Walpole and shown on the Assessors Map as Lot No. 27-107, Residence B Zone.

The application is for:

A Variance from Section 6.C.8.D of the Zoning Bylaws to allow a 6-foot solid fence within the Pall Mall Extension street sideyard setback.

Daniel Merrikin, Merrikin Engineering, explained the back yard slopes and needed to be leveled off. The fence was installed as security for his two young children. The applicant had talked to the Building Inspector at the time and understood that as long as the fence was 15 feet from the curb, he could have it built. He spoke with Mr. Mee who agreed that an earth removal did not require a permit, the wall is under four feet and therefore, does not require a permit, however, a permit is required for the fence. The applicant is in the process of building a pool, and a four foot fence is required around the pool. Mr. Merrikin submitted photographs of the view from the back yard and the retention wall. The shape of the lot is a corner lot, the topography has a 10 to 12 foot grade differential, and a pool requires a four foot fence around it. Mr. Merrikin submitted a petition signed by 15 of the applicant's neighbors in favor of the approval of the Variance.

Ms. Murphy read comments from the Conservation Commission, dated November 19, 2013; Deputy fire Chief Laracy, dated November 15, 2013; Board of Health, dated November 14, 2013; Planning Board, dated November 13, 2013; Police Lt. Leland, dated November 4, 2013; and Town Engineer Walker, dated December 3, 2013.

Ms. Murphy asked if there were any comments from the public.

Mark Hunter, 75 Emerson Rd., said he was in favor of the application.

Peter Kelley, 71 Emerson Rd., said he was in favor of the application.

Ms. Murphy asked if there were any further comments; there being none:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to close the public hearing.

The vote was **4-0-0 in favor**. (Murphy, Cunningham, Case, DeCelle voting)

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant to grant a **VARIANCE** from Section 6-C.8.D of the Zoning By-Laws to allow a 6-foot solid fence within the Pall Mall Extension street sideyard setback, said fence is hereby permitted to be as close as 9.4 feet to said street side property line.

The vote was **5-0-0 in favor**; therefore the application for a **Variance** is hereby **granted, subject to the following conditions**: (Murphy, Cunningham, Case, DeCelle voting)

CONDITIONS:

1. The portions of the fence with the Pall Mall Extension setback shall be located substantially as shown on the plan entitled “Proposed Patio Plan of Land in Walpole, MA” prepared by Colonial Engineering Inc. and dated October 16, 2012.

REASONS FOR DECISION:

It is the finding of the Board that the applicant was able to meet the requirements of Section 8C of the Zoning Bylaws.

- i. *Owing to circumstances relating to soil conditions, shape or topography of such parcel or to such structure, and especially affecting generally such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the appellant or petitioner.*

The Board finds that the applicant has shown substantial hardship which derives from both the shape and topography of the lot. The lot is a corner lot with a relatively small land area, leaving only a modest area for a sideyard/backyard, which due to the corner lot configuration, lies along the street known as Pall Mall Extension. Given this shape, and the location of the backyard in relation to Pall Mall Extension, it would be impractical to provide suitable security and privacy for the backyard with the 3-foot fence height permitted in the bylaw within the street sideyard setback. Additionally, the lot in question slopes uphill from Pall Mall Extension, rendering a 3-foot fence virtually useless in affording privacy to the backyard. Furthermore, a 3-foot fence does not meet building code requirements for a security fence around a pool, which is being installed in the rear yard/side yard along Pall Mall Extension.

- ii. *Desirable relief may be granted without substantial detriment to the public good.*

The Board finds that desirable relief may be granted without substantial detriment to the public good as the fence in question does not impact surrounding properties in any negative way and simply provides for a safe, secure and private backyard for the Applicant’s family. The fence is located at least 9.4 feet from the street sideline and approximately 70 feet from the intersection with Emerson Road, and will therefore not impact traffic movements in the area.

- iii. *Relief may be granted without nullifying or derogating from the intent or purpose of this bylaw.*

The Board finds that the granting of this Variance with the above-imposed conditions does not substantially derogate from the purpose and intent of the By-law in that Residence B zoning is intended to provide appropriate yard area for residential use and the fence in question will provide security and privacy for the yard area in question.

Consistency: This decision is consistent with purpose and intent of the Zoning By-laws.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

8:00 p.m. – Stephen Davidson – Case #20-13

Ms. Murphy read the public hearing notice for **STEPHEN J. DAVIDSON, Case #20-13**, with respect to property located at 422 High Plain St., Walpole and shown on the Assessors Map as Lot No. 35-87-18, Highway Business Zone.

The application is for:

A Special permit under Section 5.B.4.n of the Zoning Bylaws to allow a Hair Salon-Blow Dry Suites.

Mr. Davidson explained that he is renting the space from Allen Salzman. His wife has an established salon business in Norwood and needs a larger space. There is a small kitchenette for employees. The entrance is ground level and does not need a handicap access.

Ms. Murphy read comments from Sewer and Water Supt Mattson, dated December 4, 2013; Deputy Fire Chief Laracy, dated December 2, 2013; Board of Health, dated November 21, 2013; Police Dept. Lt. Leland, dated November 22, 2013; Planning Board, November 26, 2013; Conservation Agent Hershey, November 19, 2013; and Town Engineer Walker, December 2, 2013, which included parking requirements for the customers.

Mr. DeCelle pointed out that there is handicap parking near the entrance to the rental space.

Ms. Murphy suggested conditions that the applicant check with the Building Commissioner regarding the parking, and that employee parking be in the rear.

Mr. Davidson said he concurs with all of the comments and concerns included in the Board comments.

Ms. Murphy asked if there were any comments from the public; there being none:

A motion was made by Ms. Murphy, seconded by Mr. Cunningham, on behalf of the applicant, to close the public hearing.

The vote was **4-0-0 in favor**. (Murphy, Cunningham, Case, DeCelle voting)

A motion was made by Ms. Murphy and seconded by Mr. Cunningham on behalf of the applicant to grant Special Permit under Section 5.B.4.n of the Zoning Bylaws to allow a Hair Salon-Blow Dry Suites.

The vote was **4-0-0 in favor**; therefore the application for **Special Permit is hereby granted**, subject to the following conditions: (Murphy, Cunningham, Case, DeCelle voting)

CONDITIONS:

1. As stipulated by the applicant at the public hearing, the structure shall be used as a Hair Salon-Blow Dry Suites.
2. As stipulated by the applicant at the public hearing, all concerns must be addressed per the comments from Town Engineer, Margaret Walker, dated December 2, 2013; Deputy Fire Chief, Michael Laracy, dated December 2, 2013; and Supt. of Sewer and Water, Richard Mattson, dated December 4, 2013.
3. As stipulated by the applicant at the public hearing, the applicant shall meet with the Building Commissioner regarding the issues referred to in condition #2.
4. This Special Permit shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L.c.40A, Section 17, if substantial use has not sooner commenced except for good cause.

REASONS:

It is the finding of the Board that the applicant has met the requirements under Section 2B of the Zoning By Laws in that:

- i. ***Shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.***
The construction shall not cause vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood.
- ii. ***Shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.***
The construction shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood.
- iii. ***Shall not have a greater lot coverage than allowed in the zoning district in which the premises is located (refer to Section 4-B).***
The construction shall not have a greater lot coverage than allowed in the zoning district in which the premises is located.
- iv. ***Shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes.***
The construction shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes.
- v. ***Shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood.***
The construction shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood.

- vi. ***Shall not adversely effect the character of the immediate neighborhood.***
The construction shall not adversely effect the character of the immediate neighborhood.

- vii. ***Shall not be incompatible with the purpose of the zoning bylaw or the purpose of the zoning district in which the premises is located.***
The construction shall not be incompatible with the purpose of the zoning bylaw or the purpose of the zoning district in which the premises is located.

The grant of relief under this decision is limited to the relief expressly granted hereunder; and any other relief sought is hereby denied.

There being no further business, the meeting adjourned at 8:30 p.m.

Daniel J. Cunningham, Jr.
Clerk

ev

Minutes were approved on March 26, 2014.